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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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BMW OF NORTH AMERICA, LLC, *et al.*,

Plaintiffs,

vs.

QUALITY STAR BENZZ LLC,

Defendant.

2:12-cv-889-GMN-VCF

**REPORT & RECOMMENDATION**

Before the court is Plaintiffs BMW of North America, LLC and Bayerische Motoren Werke, AG's motion for attorneys' fees and costs (#18<sup>1</sup>).

**BACKGROUND**

This matter involves a trademark infringement dispute under, *inter alia*, the Lanham Act. (See Compl. (#1) at 6–8). On August 3, 2012, Plaintiffs filed a motion for default judgment, which included a request for attorneys' fees and costs and a permanent injunction. (See #14). On March 29, 2013, the court granted Plaintiff's motion for default judgment and a permanent injunction (#15). Plaintiffs' request for attorneys' fees and costs, however, was denied because Plaintiffs' filings failed to comply with Local Rule 54-16(b)(1). (See #16). The court granted Plaintiffs fourteen days to file a rule-complaint motion. (*Id.*) In response to the court's order, on April 12, 2013, Plaintiffs timely filed a

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<sup>1</sup> Pathetical citations refer to the court's docket.

1 renewed motion for attorneys' fees in costs (#18), a bill of costs (#21), and supporting declarations  
2 (##19, 20). On June 18, 2013, costs were taxed by the Clerk of Court in the amount of \$596.72 (#25).<sup>2</sup>

### 3 LEGAL STANDARD

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5 Federal Rule of Civil Procedure 54(d)(2)(B)(ii) permits an award of attorneys' fees and costs,  
6 provided that the movant "specify . . . the statute, rule or other grounds entitling the movant to the  
7 award." FED. R. CIV. P. 54(d)(2)(B)(ii). In turn, Local Rule 54-16(b)(1) requires that motions for  
8 attorneys' fee and costs include: (1) reasonable itemization and description of the legal work performed;  
9 (2) an itemization of all costs sought to be changed as part of the fee award; and, (3) a brief summary of  
10 the work performed and skill required.

### 11 DISCUSSION

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13 Plaintiffs have satisfied their burden. Plaintiffs' August 3, 2012 motion for default judgment  
14 satisfied Rule 54's requirement by specifying that the Lanham Act permits courts to award attorneys'  
15 fees under "exceptional circumstances." (*See* Pl.'s Default Mot. (#14) at 6:11–23) (citing 15 U.S.C.  
16 § 1117(a)). The court finds that exceptional circumstances exist here because Defendant's infringement  
17 is willful. *See Caesars World, Inc. v. Milanian*, 247 F. Supp. 2d 1171, 1206 (D. Nev. 2003) ("[A]  
18 trademark case is exceptional for the purposes of an award of attorneys' fees where, as here, the  
19 infringement is malicious, fraudulent or willful."); (*see also* Compl. (#1) at 5:6–7, 6:11–14, 7:5–8)  
20 (discussing Defendant's willful conduct). Cases are also "exceptional" under the Lanham Act where, as  
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24 <sup>2</sup> These are the same costs requested in the current motion. As these costs have already been taxed pursuant to LR  
25 54-1, they should not be awarded again as part of the resolution of this motion.

1 here, the defendant defaulted. *See Playboy Enters. Int'l., Inc. v. Muller*, 314 F. Supp. 2d 1037 (D. Nev.  
2 2004); (*see* Judgment (#16) at 1) (entering default judgment against Quality Star Benz, LLC).

3 Additionally, in compliance with Local Rule 54-16, Plaintiffs have filed a motion, bills of costs,  
4 and supporting declarations that include: (1) reasonable itemization and description of the legal work  
5 performed; (2) an itemization of all costs sought to be changed as part of the fee award; and, (3) a brief  
6 summary of the work performed and skill required. (*See generally* #18, #19, #20, #21). Accordingly, the  
7 court finds that Plaintiffs' request for attorneys' fees and costs complies with the Federal Rules, Local  
8 Rules, and the court's March 29, 2013 order.


9 ACCORDINGLY, and for good cause shown,

10 IT IS RECOMMENDED that Plaintiffs BMW of North America, LLC and Bayerische Motoren  
11 Werke, AG's motion for attorneys' fees and costs (#18) be GRANTED, as to attorneys' fees only.

12 IT IS FURTHER RECOMMENDED that Plaintiffs BMW of North America, LLC and Bayerische  
13 Motoren Werke, AG be awarded \$19,423.75 in attorneys' fees against Quality Star Benz, LLC.

14 IT IS SO RECOMMENDED.

15 DATED this 20th day of November, 2013.

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20 CAM FERENBACH  
21 UNITED STATES MAGISTRATE JUDGE  
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